

The Gazette of India

EXTRAORDINARY

PART II—Section 2

PUBLISHED BY AUTHORITY

No. 15] NEW DELHI, THURSDAY, MARCH 31, 1955

LOK SABHA

The following Report of the Joint Committee on the Bill further to amend the Constitution of India, was presented to the Lok Sabha on 31st March, 1955:—

Composition of the Joint Committee.

LOK SABHA

1. Shri Jawaharlal Nehru—*Chairman*.
2. Shri T. T. Krishnamachari.
3. Shri Hari Vinayak Pataskar.
4. Shri Satya Narayan Sinha.
5. Shri Ghamandi Lal Bansal.
6. Shri Chimanlal Chakubhai Shah.
7. Shri Awadheshwar Prasad Sinha.
8. Shrimati B. Khongmen.
9. Shri Digvijaya Narain Singh.
10. Shri Tribhuan Narayan Singh.
11. Pandit Munishwar Dutt Upadhyay.
12. Shri Diwan Chand Sharma.
13. Shri Radheshyam Ramkumar Morarka.
14. Shri Ahmed Mohiuddin.
15. Shri Radhelal Vyas.
16. Shri Wasudeo Shridhar Kirolikar.
17. Shri Upendranath Barman.
18. Shri T. Sanganna.

19. Shri Kotha Raghuramaiah.
20. Shri Tekur Subrahmanyam.
21. Shri R. Venkataraman.
22. Shri C. P. Matthen.
23. Shri N. C. Chatterjee.
24. Shri Jaipal Singh.
25. Shri Uma Charan Patnaik.
26. Shri Shankar Shantaram More.
27. Shri Amjad Ali.
28. Shri Asoka Mehta.
29. Shrimati Renu Chakravartty.
30. Shri Kamal Kumar Basu.

RAJYA SABHA

31. Diwan Chaman Lall.
32. Shri Sri Narayan Mahtha.
33. Shri Jasad Singh Bisht.
34. Kazi Karimuddin.
35. Shrimati Violet Alva.
36. Shri K. Madhava Menon.
37. Shri N. R. Malkani.
38. Shri N. Govinda Reddy.
39. Shri S. Chattanatha Karayalar.
40. Shri G. Ranga.
41. Dr. B. R. Ambedkar.
42. Shri Surendranath Dwivedy.
43. Shri Surendra Mahanty.
44. Shri S. N. Mazumdar.
45. Shri Govind Ballabh Pant.

DRAFTSMEN

Shri K. V. K. Sundaram—*Special Secretary, Ministry of Law.*

Shri G. R. Rajagopaul—*Joint Secretary & Draftsman, Ministry of Law.*

SECRETARIAT

Shri N. N. Mallya—*Deputy Secretary.*

Shri P. K. Patnaik—*Under Secretary.*

Report of the Joint Committee

The Joint Committee to which the *Bill further to amend the Constitution of India was referred, have considered the Bill, and I now present their Report, with the Bill as amended by the Committee annexed thereto.

*Published in Part II, Section 2, of the *Gazette of India, Extraordinary*, dated the 20th December, 1954.

2. The Committee held six sittings in all.

3. Upon the changes proposed in the Bill, the Committee observe as follows:—

Clause 2.—The Committee feel that although in all cases falling within the proposed clause (2) of article 31 compensation should be provided, the quantum of compensation should be left to be determined by the legislature, and it should not be open to the courts to go into the question whether the compensation provided in the law is adequate or not. Accordingly, a provision that the law shall not be called in question in any court on the ground that the compensation provided by it is not adequate has been added at the end of clause (2).

In the opinion of the Committee, the new clause (2A) sufficiently brings out the distinction between compulsory acquisition and requisitioning of property for public purposes and the deprivation of property or property rights by operation of regulatory or other laws. The Committee, however, consider that the clause should be expanded to cover transfer of ownership or right to possession of property to corporations owned or controlled by the State. Such corporations stand on the same footing as the Government, but are not covered by the definition of "State" in article 12. The clause has been amended accordingly.

Since all compulsory acquisition and requisitioning of property could only be by the State, the words "by the State" are unnecessary in clauses (2) and (2A) and have, therefore, been omitted.

Clause 3.—In view of the further amendment proposed in clause (2) of article 31 placing questions as to the adequacy of compensation outside judicial review, the Committee have carefully considered the need for including the various categories of laws listed in clause (1) of article 31A. In their opinion, the reference in sub-clause (b) to agricultural holdings, sub-clauses (c), (d) and (e), the reference in sub-clause (g) to the transfer of undertakings from one company to another, and the reference in sub-clause (i) to agreements or licences for the supply of power, light or water to the public are not now necessary and have therefore been omitted.

The remaining sub-clauses have been re-lettered and retained with a few modifications. In sub-clauses (c) and (d), the word "corporations" has been substituted for the word "companies" in order to cover statutory corporations as well as companies. In sub-clause (d), a reference to secretaries and treasurers has been included as

their position is similar to that of managing agents. So far as shareholders are concerned, it is sufficient to refer to their voting rights.

Since the reference to agricultural holdings in clause (1) of article 31A is being omitted, the first amendment proposed in clause 3(b) of the Bill is not necessary and has been omitted.

The Joint Committee recommend that the Bill as now amended be passed.

NEW DELHI;

The 31st March, 1955.

JAWAHARLAL NEHRU,

Chairman of the Joint Committee.

Minutes of Dissent

I

The makers of the Indian Constitution deliberately conferred on the citizens of the Indian Republic certain Fundamental Rights embodied in Part III of the Constitution. The incorporation of the Chapter of Fundamental Rights in the Indian Constitution was in keeping with the trend of progressive democratic thought. There are certain rights in every free society which are placed beyond the control of the State. The limitations were advisedly placed by our Constitution-makers upon the action of the Government and of Parliament and of the State Legislatures which were deemed to be essential for the preservation of public and private rights notwithstanding the representative character of our legislatures.

The main purpose of having Fundamental Rights is that certain elementary rights of citizen such as his right to life, liberty, property, freedom of speech regarded as inviolable under all conditions and the shifting majorities in the Legislatures should not be tampered with. Thus the Fundamental Rights, as has been pointed out by the Supreme Court of India, were intended as definite limitations on the legislative powers of the Parliament and the State Legislatures. They were really enacted for the benefit of the minorities. A great Judge of the United States of America has pertinently observed, "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other Fundamental Rights may not be submitted to vote; they depend on the outcome of no elections."

Article 31 of the Constitution is to a large extent based on Section 299 of the Government of India Act of 1935. Referring to Sections 298 and 299 a learned Judge of the Bombay High Court in a well-known case observed:

"They are in reality the statutory recognition of the fundamental principles of British jurisprudence." Madison, who was the maker of the Fundamental Rights in the American Constitution, said:

"If they are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive, they will be naturally led to resist every encroachment upon rights expressly stipulated for the Constitution by the declaration of rights."

These Fundamental Rights embodied in our Constitution were not meant to be platitudes like the directives of State policy. It is a matter for regret that slowly and steadily we are altering the Constitution out of shape and damaging vital parts of it. It is a fashion to say that property rights are not so sacred as the right to personal liberty. Yet we should remember that Article 31 clearly recognised the sanctity of the former and enacted that legislation authorising expropriation of private property should be lawful only if it was required for a public purpose and provision was made for payment of compensation.

In the Australian Constitution, Clause (XXXI) of S. 51 runs as follows:—

"The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws."

The 5th Amendment to the Constitution of U.S.A. provides that no person shall be deprived of life, liberty or property without due process of law; "nor shall private property be taken for public use without just compensation."

The Constitutions of Japan and Burma also contain safeguards against taking of private property and it can be done only for public use after payment of just compensation.

The basic principle of our Constitution like that of the U.S.A. is one of checks and balances, of division rather than concentration of power. "It embraces the original principle upon which oppositions to all forms of despotism should be based that power corrupts in whosoever hands it may lie, and that absolute power, whatever its form, corrupts absolutely".

The Courts are given the power to determine whether the purpose of expropriation is a public purpose and whether the compensation provided is a just or fair equivalent of the property taken. The American Supreme Court has also held that 'compensation' means 'just compensation' and even if the word 'just' had been omitted, the natural import of the language would be that compensation should be the equivalent of property.

By this Constitution Amendment Bill, three things are sought to be done:—

(a) The power of the Courts with regard to the quantum or adequacy of compensation is taken away. In effect compensation is being made non-justiciable.

(b) In certain categories specified in Cl. 3 of the Bill which seeks to amend Article 31-A, practically all the Fundamental Rights with regard to property are to be completely abrogated.

(c) There can be deprivation of property in any manner or to any extent and such deprivation may amount to taking away the property of the owner or making it useless for him. Yet there is to be no compensation at all if there is no technical acquisition, that is a transfer of title to the State.

In my opinion this Bill as amended by the Joint Select Committee is far too drastic and will have a deleterious effect on small property holders who will be completely at the mercy not merely of the State Legislatures but also of the executive who will work this kind of legislation in practice. Bereft of the control of the High Courts and of the Supreme Court, these extra-ordinary powers of expropriation and deprivation of property may act as engines of oppression and tyranny on the poor people in our country. In our anxiety for social legislation we should not forget cardinal principles.

For the acquisition of Zamindaris and for nullifying the effect of the judgment of the Patna High Court in the Darbhanga case, Articles 31-A and 31-B were enacted and the Constitution was amended. Radical amendment of Article 31 of the Constitution may lead to arbitrary expropriation of property without payment of just or fair or any compensation. This will destroy the sanctity of private property and may pave the way for a totalitarian regime. We must remember that the Constitution of India sought to establish 'a Government of laws and not of men'. The salutary principles enshrined in the Constitution were meant to be safeguards against both executive and legislative despotism.

We recognise the need of social control for the purpose of rehabilitation of our displaced brothers and sisters and for temporarily managing big undertakings which are mismanaged by incompetent persons. But that is no reason for taking power to effect

expropriation of any property without the payment of compensation or for taking away the jurisdiction of the Courts of the country. As a great political thinker said, 'men will sooner forget the death of their relatives than the confiscation of their property'. The Constitution is meant to be an instrument of permanent nature. It is meant to embody the cardinal principles of democratic Government and certain essential ideals for the functioning of a Republic based on justice and fair play.

An ex-Chief Justice of India has pointed out:

"It is an error to think that social welfare is something incompatible with protection of private property. An eminent English jurist has said that "the public good is in nothing more essentially interested than in the protection of private property", and the Declaration of Human Rights specifically provides that no one shall be arbitrarily deprived of his property. India, as a signatory to that document, is morally bound to act in conformity with that provision in making her Municipal laws." A distinguished American Judge observed "a great desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." Our Constitution also is based upon that principle.

I do recognise that something should be done in view of the judgment of the Supreme Court in *Bela Banerjee's* case.

In that case the Calcutta High Court had struck down the West Bengal Land Development and Planning Act (XXI) of 1948, Section 8, as *ultra vires* the Constitution. The State of West Bengal had appealed to the Supreme Court of India. That Court had upheld the judgment of the Calcutta High Court. The learned Judges observed "While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner of the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the appropriated owner, the Constitution allows free play to the legislative judgment as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of the property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the Court.

I had suggested an amendment in order to meet the situation created by this judgment which had to some extent arrested the

programme of rehabilitation of refugees in West Bengal. Unfortunately the above Act was expressed to be a permanent Statute and was not confined to the requirements of the situation created by the influx of displaced persons from East Pakistan. In my view it is not necessary to go any further than what my amendment suggested in view of the judgment.

It is no good for any Minister to make a declaration in Parliament or outside that there is no intention except in certain exceptional cases to deprive anybody of his property without payment of compensation. No Minister, however eminent, can be the Legislature itself nor can any expression of his bind the legislature. The only effective safeguard for the ordinary citizen in respect of his property is that if it is taken away, then he has access to the highest Court of the country. If he is denied that right and if compensation is made non-justiciable, then there is every risk of his being denied just or any compensation. It is difficult to understand the equity of rehabilitating displaced persons or undertaking social legislation by turning out thousands of ordinary people from their hearths and homes and denying them just or fair compensation.

I am strongly opposed to the inclusion of Article 14 and Article 19 in clause 3 of the Bill which seeks to amend Article 31-A. Thus in certain special categories of legislation the legislature, which in effect means the party in power, can expropriate property and make a discrimination between one citizen and another. It is thoroughly undemocratic and unconstitutional to take such extra-ordinary powers for Parliament or to confer the same on the State Legislatures.

It is now well established by a series of decisions of the Supreme Court of India that equal protection of law guaranteed by Article 14 forbids class legislation but does not forbid reasonable classification for purposes of legislation. It does not mean that all laws must be general in character or universal in application. The State can classify persons or things. All that it forbids is arbitrary and irrational classification. It must be based on intelligible principles and must have a nexus or reasonable relation to the object which the statute seeks to attain. What more does Parliament or the State Legislatures want for the purpose of expropriating private property for a public purpose?

All that the 14th Amendment of the American Constitution or Article 14 of the Indian Constitution secures to the citizens is that there shall be no arbitrary discrimination and that all persons belonging to the same class or category should be treated alike.

It is my duty to sound a note of warning at this stage that the conferment of such powers on the State Legislatures may act as a boomerang. Supposing a non-Congress Ministry is installed in a particular State at the next general elections, it would be open to that Ministry to ask the State Legislature to enact laws making discrimination in the matter of compensation between their supporters and their political opponents and for such discrimination no access to the Courts of law will be allowed. Thus the cardinal principle of democratic Government will be put in peril.

It is difficult to follow the logic of including Article 19 in clause 3 of the Bill. The Supreme Court has made it clear that there is no overlapping between Article 19 and Article 31. There is no difficulty with regard to the co-relation of these articles. They deal with distinct and different subjects. As a matter of fact by putting in Article 19 in Clause 3, difficulty may be created and it may lead to attacks based on the ground that Parliament is not accepting the view of the Supreme Court of India and wants that every invasion or infringement of property rights shall have to pass the double test of satisfying the provisions of Article 19 and Article 31.

In my view the requisite of having the President's assent for extra-ordinary legislation under the powers conferred by the new clause 3 is almost illusory. One can appreciate the force of the Prime Minister's observation that in certain sectors social legislation or development programme may be imperilled by allowing Courts to exercise their right of judicial Review. But in such cases the alternative is the establishment or recognition of the Supremacy of Parliament. Therefore, I would recommend for the consideration of my honourable colleagues the suggestion that such extra-ordinary legislation, when enacted by any State Legislature, should be placed before both the Houses of Parliament and their considered views in the form of resolutions should be forwarded to the President before he gives his assent to such laws.

N. C. CHATTERJEE.

NEW DELHI ;
The 31st March, 1955.

II

Our Constitution was based on the salutary principle that there should be no expropriation of property without a public purpose and without the payment of compensation. In order to make that principle a basic human right it was made a Fundamental Right and the Supreme Court was made the guardian and protector of such right.

It would be an evil day for the country and especially for the poor sections of the community, if the question of compensation or its

quantum or adequacy is made non-justiciable. The right of the citizen to approach the Courts of Law in order to vindicate such right is the most effective guarantee against executive tyranny or discrimination.

I am also of the opinion that the guaranteed freedom of equality embodied in Article 14 should be made available to the citizen and clause 3 of the Bill should be amended accordingly.

JAIPAL SINGH.

NEW DELHI;
The 31st March, 1955.

III

Having been returned to the Parliament on the vote of an electorate to whom we pledged to fight for the abolition of Zamindari and foreign capital without compensation we welcome this long-overdue Bill. We, however, feel that the government has no intention of depriving the big and vested interests and also the ex-rulers enjoying special guarantees under Constitution without compensation, and that this measure was brought forward with the limited objective of circumventing the judgments of the Supreme Court and not for any change of basic intention.

Our approach to the problem of constitutional guarantee to property rights is that it should be restricted to the property owned by men of small means and who cannot use such property for exploiting others in a big way. Compensation, if any, should be left to the discretion of the legislatures, and it should not be questioned by a court of law.

That is why we proposed that only clause 31(1) should be retained and the rest of the clause be deleted. This would have made the intention clear enough to prevent any legal ingenuity to frustrate the social objectives in view. But in refusing to accept this amendment it was clear that the government is afraid to alienate the vested interests.

Nevertheless we feel the amendment to clause (2) of Article 31 as now proposed by Select Committee is an improvement since no court will have the right to invalidate any act on the ground that the compensation is inadequate.

We support generally the provisions of 31A as it is a further limitation to property rights of big landlords and financial interests.

However, we would have liked the provisions of this section should be amended as follows:—

- (i) In clause (1)(a) the word “plantations” should be added. Many of these plantations owned largely by foreigners and making enormous profits, hold large areas of fallow land which might very well be taken for distribution among the landless without paying compensation.
- (ii) The provisions re: slums as provided in original bill should have been retained with the following addition at the end: “provided that residential hutowners should get compensation at market rate”.
- (iii) In clause 1(f) we are opposed to the deletion of the words “power and light”. Many of these are foreign dominated undertakings reaping huge profits under very advantageous terms of agreement obtained under British rule which should be modified and extinguished without payment of compensation.

In clause 5 of the Bill we have validated many Acts. We are of the opinion that many of these Acts e.g. items No. 15 and 16 are being worked in a way which detrimentally affects the small property holders and tillers of the land turning them into refugees. We think that before these Acts are validated they should have been revised to give guarantee to these small holders.

In conclusion we have no hesitation in stating that in spite of our differences as stated above we support generally the provisions of the bill as we consider it is an improvement however limited on the existing provision of the Constitution.

RENU CHAKRAVARTTY
KAMAL KUMAR BASU
S. N. MAZUMDAR

NEW DELHI;
The 31st March, 1955.

THE CONSTITUTION (FOURTH AMENDMENT) BILL, 1954

(AS AMENDED BY THE JOINT COMMITTEE)

(Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions)

BILL No. 64 B. OF 1954.

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Fourth Amendment) Short title. Act, 1955.

Amendment
of article 31.

2. In article 31 of the Constitution, for clause (2), the following clauses shall be substituted, namely:—

“(2) No property shall be compulsorily acquired or requisitioned * * * save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property * * *, notwithstanding that it deprives any person of his property.”.

3. In article 31A of the Constitution,—

Amendment
of article
31A.

(a) for clause (1), the following clause shall be, and shall be deemed always to have been, substituted, namely:—

“(1) Notwithstanding anything contained in article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries, treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent"; and

(b) in sub-clause (b) of clause (2), * * * * after the word "tenure-holder", the words "*raiyat, under-raiyat*" shall be, and shall be deemed always to have been, inserted:

4. For article 305 of the Constitution, the following article shall be substituted, namely:—

Substitution
of new article
for article
305.

"305. Nothing in articles 301 and 303 shall affect the provisions of any existing law; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955 in so far as it relates to, or prevent Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of clause (6) of article 19".

Saving of
existing laws
and laws
providing
for State
monopolies.

5. In the Ninth Schedule to the Constitution, after entry 13, the following entries shall be added, namely:—

Amendment
of the Ninth
Schedule.

"14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (Bihar Act XXXVIII of 1950).

15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U.P. Act XXVI of 1948).

16. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act LX of 1948).

17. Sections 52A to 52G of the Insurance Act, 1938, as inserted by section 42 of the Insurance (Amendment) Act, 1950 (Act XLVII of 1950).

18. The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951).

19. Chapter III-A of the Industries (Development and Regulation) Act, 1951 as inserted by section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953)".

M. N. KAUL,
Secretary.

